

**PUBLIC SAFETY DEPARTMENT [661]
Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 692A.10, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The Iowa Department of Public Safety maintains a central registry of information collected from persons who are required to register under Iowa Code chapter 692A, which is known as the Iowa Sex Offender Registry. Prior to May 17, 2004, the extent to which information from the registry was accessible to the general public varied according to the outcome of a risk assessment performed in accordance with Iowa Code section 692A.13A (Supp. 2003). In general, information about persons assessed as "moderate-risk" or "high-risk" was more widely disseminated than information about persons assessed as "low-risk". Information about all registrants was available to the general public, regardless of risk classification, upon specific request to the county sheriff or local police department. Information about registrants who had been classified as "high-risk" or "moderate-risk" to reoffend was also available on the Sex Offender Registry Web site. Information about persons classified as "low-risk" or who had not yet been assessed was not available on the Web site.

The risk assessment procedures were repealed on May 17, 2004, by the enactment of 2004 Iowa Acts, Senate File 2298, section XXV. For purposes of the Sex Offender Registry, state agencies will no longer assess the risk that any particular offender will re-offend. While Sex Offender Registry risk assessments may have provided potentially valuable information, tying the nature of public information to the outcome of such a risk assessment has denied the general public access to a comprehensive list of offenders, all of whom have publicly been convicted of offenses triggering the registration process and all of whom have been afforded the opportunity to challenge the determination that they were required to register.

Iowa Code section 692A.13, as amended by 2004 Iowa Acts, Senate File 2298, section XXV, now authorizes the Department to provide the general public electronic access to information about all persons who are registered, with the exception of those who do fall into one narrow exclusion. The exclusion provides that information about an offender whose sole reason for having to register is a violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), and who was under twenty years of age at the time of the offense, shall not be disclosed on the web page.

The publicly accessible sex offender registry Web site will now better serve the public interest by providing a comprehensive directory of persons who have been convicted of offenses which require registration. The Department is in the process of redesigning the sex offender registry Web site to delete all references to risk assessments and to assure that the Web site is presented to the general public solely as a directory of offenders who are required by statute to register.

This emergency rule making also includes a significant amendment to the process for application for determination described in subrule 661—8.303(4). This subrule has always included a process under which offenders could challenge on any lawful ground the determination that their convictions required registration, or any determination regarding the expiration of the time period in which registration is required. In situations in which the determination hinges on resolution of a factual dispute, the rule provides that the commissioner may refer the matter for hearing before an administrative law judge or other presiding officer. The same process will now clearly be available to registrants who wish to challenge on any lawful ground their inclusion on the web page directory of registered sex offenders. In those instances in which an issue of fact, which cannot be readily resolved by the records submitted with the application for determination, is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

While it is anticipated that very few registrants will raise material issues of fact which would trigger the referral for hearing, the process, whether or not it triggers an evidentiary hearing, will allow the Department to assess all challenges, based on provision of law or fact, for Departmental consideration and action, prior to judicial review under Iowa Code chapter 17A.

An additional change included in these amendments is clarification of existing language in the rules regarding access to Sex Offender Registry information through the Single Contact Repository established in Iowa Code section 135C.33.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable. Given the strong public interest in a comprehensive directory of all registered sex offenders, the Department finds that it is impracticable and undesirable to delay adding information about all registered offenders to the Registry Web site, except those who were under twenty years of age at the time they committed a violation of section 709.4, subsection 2, paragraph "c", subparagraph (4).

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 15, 2004, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by providing that information from the Iowa Sex Offender registry shall be generally available to the public through the Department's Web site, with very limited exceptions.

The language adopted in this emergency filing will also be included in a Notice of Intended Action to be filed in the near future. The Notice of Intended Action will provide an opportunity for public comment on and participation in this rule making process, including a public hearing, and may include additional amendments beyond those adopted here.

This amendment is intended to implement Iowa Code chapter 692A, as amended by 2004 Iowa Acts, Senate File 2298, Division XXV.

These amendments become effective July 15, 2004, after filing in the Governor's Office.

The following amendments are adopted.

Item 1. Amend rule 661—8.302(692A) by adding the following new subrule and renumbering as needed:

8.302(8) “Relevant information” means information including, but is not limited to, offender’s name, offender’s address or addresses, a photograph or photographs of the offender, locations frequented by the offender, criminal history information from the registry, physical descriptors of the offender, ages and genders of victims, and other information deemed relevant by the department.

Item 2. Amend rule 661—8.303(692A) as follows:

Amend subrule 8.303(4) as follows:

8.303(4) Application for determination. Form DCI-148, “Application for Determination,” shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry, or whether the time period during which the registrant is required to register has expired, or whether the registrant is exempt from the placement of information on the sex offender registry Web site. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each

offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the registrant intends to present to the department in support of the application. Failure to submit any of the required ~~orders information~~ shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, ~~and relevant statutory provisions, and other records provided, and is material to the determination;~~ the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

Rescind and reserve subrule 8.303(8).

Item 3. Rescind rule 661-8.304(692A) and adopt in lieu thereof a new rule to read as follows:

661—8.304(692A) Availability of records.

8.304(1) Release of information to criminal or juvenile justice agencies. The department may, without restriction, release information regarding any registrant to any criminal or juvenile justice agency, an agency of the state of Iowa, any sex offender registry of another state, or the federal government.

8.304(2) Sex offender registry Web site. The department shall place information regarding each registrant on the registry Web site (www.iowasexoffenders.com), except that information regarding any registrant for whom the sole basis of registration is a conviction or convictions for a violation or violations of Iowa code section 709.4, subsection 2, paragraph "c", subparagraph (4), where the offense was committed when the offender was under twenty years of age, shall not be placed on the Web site. Information regarding a registrant placed on the sex offender registry Web site may include any relevant information.

8.304(3) Release of information by a criminal or juvenile justice agency. A criminal or juvenile justice agency may provide relevant information from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, or any sex offender registry of another state, or the federal government.

b. The general public, including public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, or through a criminal or juvenile justice agency's web site.

8.304(4) List of registrants in county. Any county sheriff shall provide access to the list of all registrants within the county in which the sheriff has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. §3521 shall not be disclosed.

8.304(5) Release of information in response to individual request. A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation via the Iowa on line warrants and articles (I.O.W.A.) system as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department may notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and may provide the requester with the relevant information regarding the registrant.

8.304(6) Submission of information to the National Sex Offender Registry. The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

8.304(7) Single contact repository. The division shall perform a search of the sex offender registry on an individual based on a request submitted through the single contact repository established pursuant to Iowa Code section 135C.33. The information provided from the registry shall be limited to whether the identified person is registered.

8.304(8) No identification of victims. Any release of information regarding any registrant, other than to criminal or juvenile justice agencies, shall not identify any victim of the registrant.

These rules are intended to implement Iowa Code Chapter 692A, as amended by 2004 Iowa Acts, Senate File 2298.

Date

Kevin W. Techau
Commissioner